

**REVIEW OF MANITOBA'S
FIRST AGREEMENT LEGISLATION
AS OF FEBRUARY 28, 1985**

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**Manitoba
Labour
Research and
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1.0 INTRODUCTION

The purpose of this report is to provide a brief overview of the current status of first agreement cases brought before the Manitoba Labour Board.

First agreement legislation was initially enacted in Manitoba in 1982. The intent of the legislation is to encourage newly certified bargaining units and management to conclude their own first collective agreements. Where parties are not able to conclude agreements on their own, the legislation provides a forum for resolution of their disputes. First contract legislation is intended to overcome some of the difficulties that parties may encounter in establishing their initial collective bargaining relationships, thereby providing a foundation for harmonious labour relations.

Under the 1982 first agreement legislation, either party (management or union) could request the Minister of Labour to direct the Manitoba Labour Board to inquire into their negotiations. While not a requirement of the legislation, the Minister would normally refer cases to Conciliation Services if that process had not been used prior to the request.

Once the Labour Board received direction to inquire into the negotiations from the Minister, within 60 days the Board is obliged to either settle the provisions in dispute or instruct the parties to attempt a settlement within 30 days. If the parties are not able to effect a settlement within this time period, the Manitoba Labour Board proceeds to settle the matter within a further 30 days.

Under the original legislation, the Board has the power to order the termination of any strike or lockout that may be in place at the time of application. In addition, the employer is required to reinstate all employees. The Board also must accept any terms or conditions to which the parties have previously agreed in writing without amendment and has to give both parties an opportunity to present evidence and make representations. In setting out the provisions for the first agreement, the Board can a) take into account the extent to which the parties had or had not bargained in good faith b) consider any provisions in other collective agreements where the employees are performing similar work under similar circumstances or c) examine other matters that the Board considers to be fair and reasonable in arriving at the terms and conditions of a first agreement.

The legislation requires that the first agreement be set for a period of one year from the date on which the Board settles the terms and conditions of the contract.

With the implementation of Bill 22 on January 1, 1985, three revisions were made to the first agreement legislation. These are:

1. Applications are to be filed directly at the Manitoba Labour Board. This is consistent with the intent of Bill 22 to insulate the Manitoba Labour Board and the collective bargaining process from potential political intervention.
2. Parties are required to seek conciliation prior to filing an application for first agreement settlement.
3. The Board is no longer obliged to take into account bad faith bargaining when imposing a first agreement. The purpose of first contract provision is to ensure that a fair and reasonable agreement is concluded. The Act contains other remedies for bad faith bargaining.

2.0 STATISTICAL REVIEW OF FIRST AGREEMENT LEGISLATION

Since first agreement legislation was enacted in Manitoba in 1982, there have been thirteen requests to the Minister that have been directed to the Manitoba Labour Board. This represents 8.7% of the 150 certifications granted by the Manitoba Labour Board from 1982 to 1984. Of the applications received, the Board imposed six first agreements which was 4.0% of the certifications granted (see Table 1).

From 1982 to 1984, the Manitoba Labour Board has dealt with 13 applications under the first agreement legislation. Of these cases, the Board imposed six collective agreements. A further five cases were voluntarily settled by the parties; one application was withdrawn by the parties and the Board refused another application (see Table 2). To date, no applications have been filed in 1985.

For the first year the legislation was in force, 1982, there were four applications for a first contract. During that time, the Board did not impose a

collective agreement; two applications were voluntarily settled, one case was withdrawn and the Board refused one case.

Five applications were received in 1983. The Manitoba Labour Board imposed three first agreements and two applications were settled by the parties voluntarily.

During 1984, the Labour Board received four applications for first agreements. One application was settled voluntarily and the Board imposed three collective agreements.

As of February 28, 1985, the current status of all applications for first agreement are (see Table 3):

1. Three bargaining units have been decertified;
2. The first agreements of four applicants are still in effect;
3. Three applicants are currently negotiating for a second agreement. To date, there has been no request by these parties for conciliation services.
4. Three applicants have been successful at concluding a second agreement with the assistance of Conciliation and Mediation Services.

By year, of the four applications in 1982, three applicants have had their certificates revoked and one applicant has been successful in concluding a second agreement. Of the five applications in 1983, two have successfully concluded a second agreement and three are currently in negotiation for second agreements. However, in January, 1985, the Labour Board received applications for decertification for two of these bargaining units. The four applications heard in 1984 have their first agreements still in effect.

Of the six cases where first agreements were imposed by the Manitoba Labour Board during 1983 and 1984, three first agreements are still in effect, negotiations for a second agreement are currently underway in one and two have concluded second agreements with the assistance of Conciliation and Mediation Services (see Table 4). For the agreement which is currently in negotiation, an application for decertification has been filed against the bargaining unit.

3.0 REVIEW OF CASES UNDER FIRST AGREEMENT LEGISLATION

Table 5 provides a case by case review of the outcome of the applications and the current status of the applications at the end of February, 1985.

Of the thirteen cases, there are five cases where decertification applications have been filed. These are:

- i) Canadian Association of Industrial, Mechanical and Allied Workers and United Fibre Bond. The Board refused the application and the bargaining agent was decertified August 25, 1982.
- ii) Graphic Arts International Union, Local 516 and Screen Print Ltd. Although parties had voluntarily entered into a first collective agreement, certification was revoked on June 24, 1983.
- iii) Manitoba Food and Commercial Workers, Local 832 and Blackwood Beverages (Dauphin). The application for first agreement was withdrawn and the bargaining unit was decertified on May 27, 1983.
- iv) Amalgamated Clothing and Textile Workers, Local 459 and Freed and Freed and Cambrian Clothing Ltd. Parties had voluntarily settled a first agreement which expired on November 30, 1984. The Manitoba Labour Board received an application for decertification in January, 1985. Hearings are in progress.
- v) Manitoba Food and Commercial Workers, Local 832 and The German Society of Winnipeg. The Board imposed a first contract which expired on February 2, 1985. The Manitoba Labour Board has received an application for decertification. Hearing is scheduled for March 29, 1985.

A sixth case which has had difficulty during the first agreement settlement is:

United Food and Commercial Workers, Local 111 and Supreme Racquet Court. The Board imposed a first agreement which is to expire on December 20, 1985. In January, the bargaining agent applied to the Board for review and reconsideration of the imposed agreement. The original Board panel has not yet decided whether to accept or reject the application.

TABLE 1

RATIO OF FIRST AGREEMENT APPLICATIONS AND BOARD IMPOSED
FIRST AGREEMENTS TO THE NUMBER OF CERTIFICATIONS GRANTED
1982 - 1984

Year	Certificates Granted	Applications for First Agreement	Ratio of First Agreement Applications/ Certifications	Board Imposed First Agreements	Ratio of Board Board Imposed Agreements/ Certifications
1982	41	4	9.8%	-	0.0%
1983	51	5	9.8%	3	5.9%
1984	58	4	6.9%	3	5.2%
Total	150	13	8.7%	6	4.0%

TABLE 2

DISPOSITION OF FIRST AGREEMENT APPLICATIONS

Year of Application	Number of Applications	Settled Voluntarily By Parties	Withdrawn By Parties	Settled By Board	Refused By Board
1982	4	2	1		1
1983	5	2		3*	
1984	4	1		3	
TOTAL	13	5	1	6	1

* For the three first agreements imposed by the Manitoba Labour Board, one applicant has been successful in concluding a second agreement. The other two applicants are in the process of negotiating.

TABLE 3
CURRENT STATUS OF FIRST AGREEMENT APPLICATIONS

Year of Application	Number of Applications	Current Status of Applicants			
		Certifications Revoked	First Contract Still In Effect	Negotiating for Second Agreement	Second Agreement Concluded
1982	4	3			1
1983	5			3**	2
1984	4		4		
TOTAL	13	3	4	3	3***

** To date, these applicants have not requested Conciliation Services. For two of these cases, the Manitoba Labour Board has received applications for decertification.

*** These three collective agreements were concluded with the assistance of Conciliation and Mediation Services

TABLE 4
CURRENT STATUS OF THOSE FIRST AGREEMENTS WHICH WERE IMPOSED BY THE MANITOBA LABOUR BOARD

Year of Application (Calendar)	Number of of First Agreements Imposed	Current Status		
		First Agreement In Effect	Negotiating Second Agreement	Second Agreement Concluded
1982	0	0	0	0
1983	3		1*	2**
1984	3	3		
TOTAL	6	3	1*	2**

* The Manitoba Labour Board has recently received an application for decertification of the bargaining unit.

** These two second agreements were settled with assistance of Conciliation and Mediation Services.

TABLE 5

REVIEW OF CASES - FIRST AGREEMENT LEGISLATION

Union	Employer	Date of Application	Outcome of Application	Current Status
1. Canadian Association of Industrial, Mechanical and Allied Workers	United Fibre Bond	July 8, 1982	Hearing held. Board refused Application.	Certification revoked August 25, 1982
2. Graphic Arts International Union, Local 516	Screen Print Ltd.	July 27, 1982	Parties voluntarily entered into a Collective Agreement. Expiry date: October 14, 1983	Certification revoked June 24, 1983
3. Manitoba Food & Commercial Workers, Local 832	Blackwood Beverages (Dauphin)	August 3, 1982	Application withdrawn May 1983	Certification revoked May 27, 1983
4. Manitoba Food & Commercial Workers, Local 832	Blackwood Beverages (Brandon)	December 29, 1982	Parties voluntarily entered into a Collective Agreement. Expiry date: February 23, 1984	Second Agreement concluded with Conciliation Services Expiry date: February 23, 1985
5. Canadian Union of Public Employees, Local 5143	Care-A-Lot Day Care Centre Ltd.	February 7, 1983	Board imposed first Collective Agreement. Expiry date: May 15, 1984	Second Agreement concluded with Conciliation Services Expiry date: May 15, 1986
6. Amalgamated Clothing and Textile Workers, Local 459	Freed and Freed/Canbrian Clothing Ltd.	March 22, 1983	Parties voluntarily entered into a Collective Agreement. Expiry date: November 30, 1984	Parties are in negotiation for second agreement. Parties have <u>not</u> yet requested Conciliation Services. The Manitoba Labour Board has recently received an application for decertification.

TABLE 5 cont'd

Union	Employer	Date of Application	Outcome of Application	Current Status
7. Canadian Paperworkers Union, Local 830	Instabox (Winnipeg) Ltd.	May 26, 1983	Board imposed first Collective Agreement. Expiry Date: July 20, 1984	Second Agreement concluded with Conciliation Services. Expiry Date: July 20, 1986
8. Manitoba Food & Commercial Workers, Local 832	The German Society of Winnipeg	November 4, 1983	Board imposed first Collective Agreement. Expiry Date: February 2, 1985	Parties are in negotiation for second agreement. The Manitoba Labour Board has recently received an application for decertification.
9. International Union of Operating Engineers, Local 827	Winnipeg Regional Housing Authority	December 19, 1983	Parties voluntarily entered into a Collective Agreement. Expiry date: December 31, 1984	Parties are in negotiation for second agreement.
10. United Brotherhood of Carpenters & Joiners of America, Local 343	Alpine Roofing and Building Contractors, Ltd.	May 22, 1984	Board imposed first Collective Agreement. Expiry Date: July 12, 1985	First Contract still in effect.
11. United Food & Commercial Workers, Local 111	Premier West Peat Moss Limited	July 31, 1984	Board imposed first Collective Agreement. Expiry Date: September 26, 1985	First Contract still in effect.
12. Manitoba Food & Commercial Workers, Local 832	R.M.K. Enterprises Operating name: Budget Rent-A-Car	September 26, 1984	Parties voluntarily entered into a Collective Agreement. Expiry Date: October 31, 1986	First Contract still in effect.
13. United Food & Commercial Workers, Local 111	Supreme Racquet Courts	October 25, 1984	Board imposed first Collective Agreement. Expiry date: December 20, 1985	First Contract still in effect. January, 1985, the union applied to the Board for review and reconsideration of imposed first agreement. The original board panel will be meeting to decide whether to accept or reject the application).

APPENDIX

FIRST AGREEMENT LEGISLATION AS OF JANUARY, 1985

WITH CHANGES IMPLEMENTED THROUGH BILL 22

Dispute re first agreement.

75.1(1) Where

- (a) an employer or bargaining agent for a unit is required, by notice given under section 51 after the coming into force of this section, to commence collective bargaining with a view to the conclusion of a first collective agreement between the employer and the bargaining agent in respect of the unit;
- (b) a conciliation officer has been appointed under subsection 59(1) to confer with the bargaining agent and the employer;
- (c) a period of 90 days after the certification of the bargaining agent, and any period of extension that may be ordered in respect of the bargaining agent and the employer under subsection 10(3), have expired; and
- (d) the bargaining agent and the employer have not concluded a first collective agreement;

the bargaining agent or the employer may apply in writing to the board to settle the provisions of a first collective agreement between the parties.

En. S.M. 1984, c. 21, s. 37.

S.M. 1972, c. 75 — Cap. L10

LABOUR RELATIONS

Board to settle agreement.

75.1(2) Where a bargaining agent or an employer makes an application under subsection (1), the board shall

- (a) notify the other party that the application has been made;
- (b) inquire into the negotiations between the parties; and
- (c) proceed to settle the provisions of a first collective agreement between the parties.

En. S.M. 1984, c. 21, s. 37.

Time limit for board.

75.1(3) Where an application is made under subsection (1), unless the parties conclude a first collective agreement within 60 days after the date of the application, the board shall, within a further 3 days,

- (a) settle the provisions of a first collective agreement between the parties; or
- (b) notify the parties in writing that, in the opinion of the board, the parties might, either through their own endeavours or with the assistance of the conciliation officer, conclude a first collective agreement within 30 days after the date of the notice under this clause, and that therefore the board declines to settle the provisions of a first collective agreement between the parties.

En. S.M. 1984, c. 21, s. 37.

Failure of parties to conclude agreement.

75.1(4) Where the board sends a notice to the parties under clause (3)(b) and the parties fail to conclude a first collective agreement within the 30 day period referred to therein, the board shall, within a further 30 days, settle the provisions of a first collective agreement between the parties

En. S.M. 1984, c. 21, s. 37.

Termination of strike or lockout.

75.1(5) Where an application under subsection (1) is made during a strike by, or a lockout of, employees in the unit, the employees shall forthwith terminate the strike or the employer shall forthwith terminate the lockout, and the employer shall reinstate the employees in the unit in the employment they had at the time the strike or lockout commenced

- (a) in accordance with any agreement between the employer and the bargaining agent respecting reinstatement of the employees in the unit; or
- (b) where no agreement respecting reinstatement of the employees in the unit is reached between the employer and the bargaining agent, on the basis of the seniority standing of each employee in relation to the seniority of the other employees in the unit employed at the time the strike or lockout commenced, except as may be directed by an order of the board made for the sole purpose of allowing the employer at a totally shut-down workplace to resume normal operations in stages.

En. S.M. 1984, c. 21, s. 37.

LABOUR RELATIONS

S.M. 1972, c. 75 — Cap. L10

Procedure for settling agreement.

75.1(6) In settling the provisions of a first collective agreement under this section, the board shall accept, without amendment, any provisions agreed upon in writing by the parties and shall give the parties an opportunity to present evidence and make representations, and the board may take into account

- (a) the terms and conditions of employment, if any, negotiated through collective bargaining for employees performing the same or similar functions in the same or similar circumstances as the employees in the unit; and
- (b) such other matters as the board considers will assist it in arriving at provisions of a first collective agreement between the parties which are fair and reasonable in the circumstances.

En. S.M. 1984, c. 21, s. 37.

Term of first agreement.

75.1(7) Where the board settles the provisions of a first collective agreement under this section, the collective agreement shall be effective for a period one year from the date on which the board settles the provisions thereof, and the collective agreement shall be binding on the parties and on the employees in the unit as though it were a collective agreement voluntarily entered into between the parties, except to the extent that any of its provisions may be amended by the parties by subsequent agreement in writing.

En. S.M. 1984, c. 21, s. 37.

Agreement in writing.

75.1(8) The board shall commit to writing every collective agreement the provisions of which it settles under this section, and section 65, with necessary modifications, applies to the collective agreement.

En. S.M. 1984, c. 21, s. 37.